

The opinion in support of the decision being entered today was **not** written
for publication and is **not** binding precedent of the Board.

Paper No. 47

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DARRELL J. KUCHMAREK and RICHARD L. SEIDERS

Appeal No. 2003-1953
Application No. 09/244,742

HEARD: April 14, 2004¹

Before ABRAMS, NASE, and BAHR, Administrative Patent Judges.
ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 3-15,
which are all of the claims pending in this application.

We REVERSE.

¹This was a telephonic hearing.

BACKGROUND

The appellants' invention relates to a cutting blade for a cutting apparatus. An understanding of the invention can be derived from a reading of exemplary claim 8, which appears in the appendix to the Brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Walker	245,330	Aug. 9, 1881
Sands <u>et al.</u> (Sands)	5,339,716	Aug. 23, 1994

The following are the standing rejections:

- (1) Claims 3, 5 and 8-15 under 35 U.S.C. § 102(b) as being anticipated by Walker;
- (2) Claims 4 and 7 under 35 U.S.C. § 103(a) as being unpatentable over Walker; and
- (3) Claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Walker in view of Sands.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the Answer (Paper No. 39) for the examiner's complete reasoning in support of the rejections, and to the Brief (Paper No. 38) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The Rejection Under Section 102

The appellants' invention relates generally to cutting machines for cutting window coverings, and more particularly to a cutting blade having a pocketed cutting portion. The examiner has taken the position that independent claims 8, 10 and 13 are anticipated² by Walker. The rejection is based not upon specific description in the reference, but upon the examiner's finding that the subject matter claimed is "reliably" shown in the drawings (Answer, pages 5-8). The appellants argue that such is not the case, in that it cannot be discerned therefrom that the Walker blade comprises a pocketed cutting portion, much less such a construction defined in the manner recited in all of the independent claims. We agree with the appellants, and we therefore will not sustain this rejection.

Walker provides no description of the cutting portion of the cutting blade. As we understand the examiner's position, it is that Figure 2 shows a cutting portion **A** tapered to an edge, that the lines on the lowermost portion of blade **C** in Figure 1 should be interpreted as defining a pocket in the blade, and that the pocket necessarily would comprise a plurality of interior side walls spaced inwardly of the exterior side walls of the blade. While we would concede that Figure 2 provides evidence that at least a portion of the lower edge of blade **C** tapers to a cutting edge, we cannot agree that the drawing,

²Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of the claimed invention. See, for example, RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

in and of itself, provides sufficient information to allow one of ordinary skill in the art to conclude that the cutting edge is located in a pocket of the blade defined by “a plurality of interior side walls . . . extending from said second face toward said first face to . . . an intermediate face” of the blade as is required by each of the independent claims. In this regard, we find no support in the reference for the figure added by the examiner on the sheet of marked-up drawings attached to the Answer, which is purported to show side walls at 5, for no such side walls are shown in Figure 2 of the reference, described as “a vertical cross-section of a portion of the machine,” which would be expected to show a side wall at the end of a pocket if such an element existed. In addition, the claim requires that the cutting edge be “surrounded at the lower end . . . by the massive portion of said cutting blade” (emphasis added), a limitation which, in our view, cannot reliably be found in the reference.

Since Walker fails to disclose or teach all of the subject matter required by independent claims 8, 10 and 13, the rejection of these claims cannot be sustained. It follows that the like rejection of dependent claims 3, 5, 9, 11, 12, 14 and 15 also cannot be sustained.

The Rejections Under Section 103

The first of these rejections is that claims 4 and 7, which depend from claim 8, would have been obvious³ in view of Walker. Considering Walker in the light of 35 U.S.C. § 103 does not alter our conclusion that it fails to disclose or teach the pocket described in independent claim 8. This being the case, Walker fails to establish a prima facie case of obviousness with respect to the subject matter recited in dependent claims 4 and 7, and we will not sustain this rejection.

Claim 6 stands rejected as being obvious in view of Walker and Sands, the latter being cited for teaching a blade having a second taper. Be that as it may, as we stated above, Walker fails to disclose or teach the pocket recited in claim 8, from which claim 6 depends through claims 5 and 3, and therefore this rejection cannot be sustained.

CONCLUSION

None of the three standing rejections is sustained.

³The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

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